BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers	CC Docket No. 98-166

COMMENTS of the GENERAL SERVICES ADMINISTRATION

EMILY C. HEWITT
General Counsel

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501–1156

Economic Consultants:

Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

January 19, 1999

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The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on October 5, 1998. In the NPRM, the Commission seeks comments on whether the low-end adjustment threshold should be revised in this proceeding.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services. From their perspective as end users, the FEAs have consistently supported the

Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

Until such time as competition provides an effective control over incumbent local exchange carrier ("LEC") prices, however, the Commission's price cap plan must be relied upon to ensure just and reasonable rates. In these Comments, GSA endorses the Commission's tentative conclusion that the low-end adjustment threshold should remain 100 basis points below the rate of return prescribed in this proceeding.[1]

II. The Low-End Adjustment Threshold Should Be Set At 100 Basis Points Below The Rate-of-Return Prescribed In This Proceeding

The low-end adjustment mechanism permits incumbent price cap LECs with rates of return less than a threshold level to increase their prices to a level that would enable them to earn at the threshold level.[2] The Commission established this mechanism to ensure that the LECs would retain the ability "to raise the capital necessary to provide modern, efficient services to customers."[3] The Commission noted that unusually low earnings "may be attributable to an error in the productivity factor, the application of an industry-wide factor to an individual LEC, or unforseen circumstances in a particular area

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[1] NPRM, para. 55.

[2] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, FCC 90-314, released October 4, 1990 ("Price Cap Order"), para 147-149.

[3] Id., para. 147.

of the country."[4] The Commission retained the low-end adjustment mechanism in its last price cap performance review to "guard against our new X-Factor requiring individual LECs to charge unreasonably low rates."[5]

The Commission established the low-end adjustment threshold at 10.25 percent, or 100 basis points below the simultaneously determined rate of return of 11.25 percent.[6] The Commission noted that 10.25 percent was below the range it identified for the interstate access cost of capital, but above the marginal cost of long-term telephone debt, which was just under 10 percent.[7] The Commission concluded that this threshold "is not likely to be confiscatory, because it should still allow most companies to continue to attract capital and maintain service."[8] The Commission reasoned that its price cap plan must "present the risk of reduced earnings if the carrier fails to control costs and become more efficient."[9] For this reason it selected a threshold "below the level of earnings available under traditional rate-of-return regulation, yet not so low as to cause a confiscatory result in the short term."[10]

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[4] Id.

[5] Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Fourth Report and Order, FCC 97-159, released May 21, 1997, para. 11.

[6] Price Cap Order, para. 165.

[7] Id.

[8] Id.

[9] Id., para. 164.

[10] Id.

As GSA argued in response to a February 1996 Public Notice, it is both logical and equitable for the Commission to adjust the low-end adjustment mechanism when the authorized rate-of-return is represcribed.[11] The lawfulness of the Commission's price cap plan is dependent upon the fact that it was designed to ensure just and reasonable rates. A failure to adjust the low-end adjustment threshold when the LECs' cost of capital changes would break this link to just and reasonable rates.

For example, if the LEC cost of capital were to increase and the low-end adjustment level were to remain unchanged, the LECs might be denied the opportunity to increase their rates even if their existing rates were confiscatory. Certainly the LECs would not remain silent in the face of such a development. The Commission would be awash in emergency petitions and court actions.

The current situation is equally unjust, but in the opposite direction. It is ratepayers rather then LECs, who are injured. As GSA demonstrates in its Direct Case, the cost of capital has fallen sharply and the authorized return should be lowered. Unless the low-end adjustment threshold is also lowered, the LECs will receive a revenue windfall at ratepayers' expense. LECs could find themselves eligible for price increases even though their earnings are already above the newly authorized rate of return. The Commission must protect the interests of regulated telecommunications users and not allow such a condition to develop.

[11] Rate of Return Inquiry, AAD 96-28, Comments of GSA, March 11, 1996.

VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to set the low-end adjustment threshold at 100 basis points below the rate of return prescribed in this proceeding.

Respectfully submitted,

EMILY C. HEWITT
General Counsel

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

Michael J. Ettner

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501–1156

January 19, 1999

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 19th day of January, 1999, by hand delivery or postage paid to the following parties:

The Honorable Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Harold Furchgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Michael Powell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Warren Firschein
Accounting Safeguards Division
Federal Communications Commission
2000 L Street, N.W., Room 257
Washington, DC 20554

Kenneth P. Moran
Chief, Accounting Safeguards Division
Federal Communications Commission
2000 L Street, Suite 812
Washington, DC 20554

Richard B. Lee
Vice President
Snavely King Majoros O'Connor & Lee
1220 L Street, N.W., Suite 410
Washington, DC 20005

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, DC 20037

Telecommunications Reports
11th Floor, West Tower
1333 H Street, N.W.
Washington, DC 20005

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Michael J. Ettner